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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/877,405	06/08/2001	Peter R. David	22700-708	7697

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EXAMINER

KUNEMUND, ROBERT M

ART UNIT PAPER NUMBER

1765

DATE MAILED: 10/01/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/877,405

Applicant(s)

DAVID ET AL.

Examiner

Robert M Kunemund

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 January 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-45 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1 to 7, 11 to 15 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freud et al. in view of Wilson et al and Manz (5,180,480).

The Freud et al reference teaches a method of monitoring crystallization of protein crystals. Samples of the solution to be crystallized are placed in a microchamber. The samples are then treated so as to cause crystallization. The results are view by spectrometer to see the state of the crystallization and thus to monitor the growth of the overall solution, note, entire reference. The difference between the instant claims and the prior art is the use of lumens and method of

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determining crystallization. The Wilson et al reference teaches that many samples of protein solutions are taken and caused to crystallize under differing conditions, note page 417. The Manz reference teaches an apparatus with lumens to take samples of liquids; there can be multi cannels and divides, note figures. It would have been obvious to one of ordinary skill in the art to modify the Freud et al process by the teachings of the Wilson and Manz references to use lumens, channels and use different conditions in order to create a database of information to allow for crystallization to occur more often then not in protein growth and use lumens to better analyze the solid materials.

Claims 8 to 10, 22 to 37 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freud et al. in view of Wilson et al and Manz (5,180,480).

The Freud et al, Wilson et al and Manz references are relied on for the same reasons as stated, supra, and differ from the instant claims in the size of the apparatus and number of chambers. However, in the absence in the absence of unexpected, it would have been obvious to one of ordinary skill in the art to determine through routine experimentation the optimum, operable number of chambers and sizes in the combined prior art in order to allow for differing conditions and size enough to let the materials crystallize.

Claims 16 to 21, 38 to 42 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freud et al. in view of Wilson et al and Manz (5,180,480).

The Freud et al, Wilson et al and Manz references are relied on for the same reasons as stated, supra, and differ from the instant claims in the means to analyze.

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However, in the absence in the absence of unexpected, it would have been obvious to one of ordinary skill in the art to determine through routine experimentation the optimum, operable means to analyze the solid materials in the combined prior art in order to ensure the results are accurate.

Examiner's Remarks

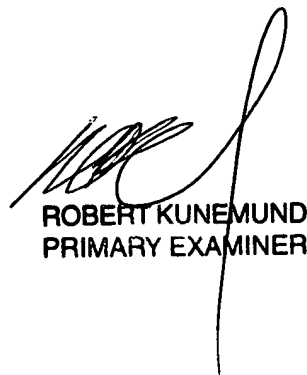
The remaining references are merely cited of interest as showing the state of the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert M Kunemund whose telephone number is 703-308-1091. The examiner can normally be reached on 8 hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ben Utech can be reached on 703-308-3636. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3599 for regular communications and 703-305-3599 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.

RMK
September 23, 2002



ROBERT KUNEMUND
PRIMARY EXAMINER